

Paternity in PA

Some basic terminology

Before we get started discussing some of the most prominent paternity issues, there are a few terms you should be familiar with. A “presumptive father” is someone who is presumed to be the father of a child based on the fact that he was in an in-tact marriage with the mother when the child was born. In contrast, a “punitive father” is someone who is seeking to prove that he is the father. Now that we got that out of the way, let’s get started!

Why does paternity matter?

Paternity is just a fancy way of saying that someone is the legal father of a child. But what does it mean to be a legal parent? It can mean many things, but most importantly, it means having rights to the child. For example, a father is entitled to see his child. So, if paternity is established, the father has a right to ask the court for custody or visitation rights. On top of that, the court may also give the father some sort of legal custody over the child, meaning that he gets to participate in important decision-making such as to the child’s religion, medical treatment, choice of school, and more. It also allows the father to have his name put on the child’s birth certificate. Establishing paternity likewise imposes responsibilities upon the father. For example, children are entitled to support from both of their parents, so establishing paternity opens the door to child support. In contrast, if paternity is not established, the mother may not seek child support.

In addition to giving rights to the father, establishing paternity also gives rights to the child. For example, inheritance rights. If someone dies without a will, usually the estate or some portion of it will go to the decedent’s child (e.g., where there is no spouse or where the spouse is not the parent of decedent’s child). But if paternity is never established, the child will be unable to inherit. It is worth noting that these inheritance rights work both ways. If the child dies without a will and has no spouse or kids of their own, the child’s father could inherit all or part of the estate. If paternity has never been established, the father would not inherit. Paternity can sometimes also enable a child to benefit from the father’s insurance or health benefits. So, as you can see, establishing paternity can be vital for the mother, father, and even the child.

Establishing paternity

1) Children born to an in-tact marriage

In Pennsylvania when a child is born to an “in-tact marriage”, there is a presumption that the husband is the father of the child. This means that the husband (also referred to as the “presumptive father”) is entitled to the same rights and responsibilities to the child as the mother is. Obviously, this doesn’t pose any issues where the husband actually *is* the biological father, but what if he *isn’t*?

Pennsylvania’s presumption can be difficult to overcome, but there are two exceptions. The first is where the husband was physically incapable of fathering the child (for example, he is infertile) and the second is where the husband was not near the mother at the time of conception (for example, was on the other side of the country). Other than showing either of

those two things, the presumption will probably stand. What does this mean? If a presumption of paternity exists, no question as to paternity can be raised, and not even DNA testing can be introduced to rebut it. In other words, a third-party (the real biological father) cannot attack paternity if the child was born to married parents and their marriage is still in-tact. However, if the marriage is *no longer in-tact*, a third-party who believes he is the biological father (as well as the presumptive father) may attack paternity.

Where there is a presumption of paternity and the presumptive father is not the real father, several legal issues can arise. Presumptive fathers may seek to either keep or dispose of their rights and responsibilities to the child. Third-parties who believe they are the true biological father of the child (also referred to as “punitive fathers”) may seek to assert their rights to the child. Mothers may also try to enforce financial obligations on an unwilling biological father once his true identity is obtained. If you have more questions about your rights under Pennsylvania’s presumption of paternity, please contact Bethany Notaro, Esq.

2) Children born to unmarried parents

There are several ways to establish paternity when a child is born to unmarried parents. It can be done voluntarily with the permission of both parents, or involuntarily, meaning that one parent does not agree with the paternity.

a. Establishing paternity *voluntarily*

If the mother and father both agree, they can establish paternity voluntarily up until the child turns 18. One way to do this is by the mother and father both signing an *acknowledgement of paternity*. This can be done at the hospital immediately after the birth of the child, or even during support proceedings. Once the acknowledgement of paternity has been signed and filed with the Department of Public Welfare, the father becomes the legal parent of the child and his name will be added to the birth certificate. The acknowledgement constitutes conclusive evidence of paternity, and no further DNA testing will be required. Because of this, if either party is unsure about whether the alleged father really is the father, they should not sign an acknowledgement of paternity.

b. Establishing paternity *involuntarily*

Where either one of the parties will not sign an acknowledgement of paternity, the other party may seek to establish paternity involuntarily by initiating court proceedings. If the father will not sign, the mother can file a Petition to Determine Paternity or a Complaint for Child Support with the Family Court. If father still denies paternity after the court proceedings are initiated, the court may order DNA testing to resolve the issue. DNA testing can be performed using a swab from the interior of a person’s mouth, by blood, or by other physical material. A father can voluntarily submit to a DNA test or the court can compel the father to submit to a DNA test. If the father fails to appear for the test, the court has the power to enter an order of paternity as well as an interim order for child support. If paternity is confirmed by the DNA test, the court can issue an order of paternity. Additionally, a support order may also be entered.

If on the other hand the mother refuses to sign a paternity acknowledgement, the father can still sign and file it himself. However, a paternity acknowledgement that is not signed by the mother does not give the father any rights to the child, except to be notified of any proceeding to terminate parental rights (for example, an adoption proceeding). If the father does want rights to the child, he should instead seek to establish paternity involuntarily by filing a Petition to Determine Paternity with the Family Court. Once court proceedings are initiated, the father can voluntarily submit to a DNA test or the court can order that one be done. If the DNA test confirms paternity, the court can issue an order of paternity and potentially an order for support.

3) Other ways to establish paternity

There are also a few other ways to establish paternity in this Commonwealth. For purposes of prescribing benefits to children born to unmarried parents in Pennsylvania, paternity can be established if the child's parents eventually marry each other after having the child.

Pennsylvania also recognizes something called paternity by estoppel. This means that a man has acknowledged paternity through his own actions such as supporting the mother and child financially or emotionally or accepting the child into his household. While paternity by estoppel usually occurs between unmarried parents, it can occur within a marriage as well. The primary consideration in these cases is the best interest of the child, so if a man has held himself out to be a child's father, and then discovers that he isn't actually the biological father, the court can estop him from denying his obligation to pay child support if it is unfair to the child.

Disestablishing Paternity

In many cases the wrong person is deemed the father of a child. For example, a husband later finds out he is not the father of his child, or someone who thought he was the father may have signed an acknowledgement of paternity only to find out later that he wasn't actually the father. Because paternity opens the door to many financial responsibilities, men in this situation may seek to disestablish paternity.

1) Presumptive fathers

With divorce or annulment comes many issues, especially if there are children involved. A child's right to support from both of his or her parents still stands, regardless of if the child's parents are married. So, upon divorce or annulment a court may order the presumptive father to pay child support or grant him custody rights to the child. But where the husband later finds out that he is not truly the father, he may try to avoid this financial obligation by disestablishing paternity. Because the presumption of paternity only stands if the marriage is in-tact, it is much easier to overcome once the parties separate or divorce. The husband would most likely raise this issue during proceedings for child support. In this case, the court may order genetic testing to resolve the issue once and for all.

2) After you sign an acknowledgement of paternity

In Pennsylvania, both the mother and the father have a right to cancel an acknowledgement of paternity. However, this must usually be done within 60 days. After the 60 days have lapsed, an acknowledgment of paternity can only be challenged in court on the basis of fraud, duress or material mistake of fact. A common misconception is that if a woman tells a man she is taking birth control,

stops without telling him, and then gets pregnant, that this constitutes fraud. However, no state recognizes this as a defense to child support. Rather, an example of fraud would be the mother inducing the father into signing the acknowledgement, while knowing that he is not actually the father. While the paternity is being challenged, the court will probably not suspend any support orders already in place, except in cases where good cause is shown.

*(For more information on this topic or any topic in divorce, custody, mediation, child support, collaborative law, PFA matters, alimony, or other family law matters, visit www.Pittsburgh-Divorce-Lawyer.com or contact **Notaro & Associates, PC** at **412-281-1988** for a free phone consultation with an attorney. You can also schedule online by clicking [here](#).)*